

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**ELAINE JACOBSON, PAUL PITALIS,** )  
**ROBERT QUANE,** )  
**GEORGIA NUT COMPANY** )  
**and VILLAGE OF SKOKIE, an Illinois** )  
**Municipal Corporation,** )  
 )  
**Plaintiffs,** )  
 )  
**v.** )  
 )  
**CITY OF EVANSTON, an Illinois** )  
**Municipal Corporation,** )  
**STEPHEN HAGERTY, Individually, and as** )  
**Mayor of Evanston, JUDY FISKE,** )  
**Individually, PETER BRAITHWAITE,** )  
**Individually, MELISSA WYNNE, Individually,** )  
**DONALD WILSON, Individually, ROBIN** )  
**RUE SIMMONS, Individually, THOMAS** )  
**SUFFREDIN, Individually, ELEANOR** )  
**REVELLE, Individually, ANN RAINEY,** )  
**Individually, and CICELY FLEMING,** )  
**Individually,** )  
**Defendants.** )

**18 cv \_\_\_\_\_**

**COMPLAINT**

NOW COME the Plaintiffs, Elaine Jacobson, Paul Pitalis, Robert Quane, Georgia Nut Company, and the Village of Skokie, a Municipal Corporation, (hereinafter collectively "Skokie Plaintiffs"), by and through its attorneys, Michael M. Lorge, Corporation Counsel, and James G. McCarthy, Assistant Corporation Counsel, and complain about the Defendants, City of Evanston, an Illinois Municipal Corporation, (hereinafter, "Evanston"), Stephen Hagerty, individually and as Mayor of Evanston, Judy Fiske, individually, Peter Braithwaite, individually, Melissa Wynne, individually, Donald Wilson, individually, Robin Rue Simmons, individually, Thomas Suffredin, individually,

Eleanor Revelle, individually, Ann Rainey, individually, and Cicely Fleming, individually, (hereinafter collectively "Evanston Defendants"), and state as follows:

**Nature of the Case**

1. This action is filed pursuant to the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States of America and 42 U.S.C. §1983 and §1988 against Evanston and the Evanston Defendants for violating Skokie Plaintiffs' rights to procedural due process, substantive due process and equal protection under the law. This action arises from Evanston's and the Evanston Defendants' calculated, oppressive and punitive actions to disadvantage the Skokie Plaintiffs in their access to and use of safe water from Lake Michigan as evidenced by their adoption of Ordinance No. 95-O-17 (hereinafter "Punitive Rate Ordinance").

This Punitive Rate Ordinance increased water rates affecting only Skokie Plaintiffs, so that Skokie Plaintiffs are forced to pay an exorbitant rate for Lake Michigan water sold by Evanston. The Punitive Rate Ordinance sets the rate for the Skokie Plaintiffs at an amount that is 264%-307% more than the amount Evanston charges to similar Lake Michigan water users located in adjacent and neighboring communities.

Access to water has been determined to be a basic individual right protected by federal statutes. The fundamental question which this Court is urged to undertake, is whether a municipality that controls Lake Michigan water access as a result of its fortuitous location can charge arbitrary and disparate rates for the sale and delivery of water to similarly situated municipal customers. Guided by principles of fairness, due process and equitable rights, this case seeks constraints over a municipality's monopolistic exercise of market power and privilege over basic water rights. It

demands consideration of what standards are appropriate in determining whether a municipality has imposed rates that are unduly discriminatory and unreasonable. It seeks a resolution, other than through expensive and protracted litigation, for municipalities to be assured relief from another municipality's unregulated and exploitive conduct over water access.

This case frames as a legal matter what local press has studied and reported on extensively of late; the unreasonable, arbitrary and profound disparities of municipal utility rate setting practices in water costs across local jurisdictions (See Ted Gregory, Cecilia Reyes, Patrick M. O'Connelly and Angela Caputo, *The Water Drain – Same Lake, Unequal Rates*, CHICAGO TRIBUNE INVESTIGATIONS, October 25, 2017). It focuses on the inequity whereby private sector water suppliers, by dint of regulation, must demonstrate their service rates serve the public interest, whereas municipal owned water suppliers impose rates by unchecked and unjustified fiat.

### **Jurisdiction and Venue**

2. Jurisdiction is proper in this Court pursuant to 28 U.S.C. §1331 because this action arises under federal law. Specifically, this case arises under 42 U.S.C. §1988 and alleges violations of Skokie Plaintiffs' rights under the Fifth Amendment and the Fourteenth Amendment of the U.S. Constitution and other violations of equal rights.

3. All events and allegations set forth below occurred within the Northern District of Illinois, Eastern Division.

### **Parties**

4. Skokie Plaintiffs are citizens of the United States and the State of Illinois.

5. Elaine Jacobson is, and at all times relevant herein, was, a resident of the Village of Skokie dependent upon its public water supply and is retired and living on a fixed income.

6. Paul Pitalis is, and at all times relevant herein, was, a resident of the Village of Skokie dependent upon its public water supply and is living on a fixed income.

7. Robert Quane is, and at all times relevant herein, was, a resident of the Village of Skokie dependent upon its public water supply and is semi-retired and living on a fixed income.

8. Georgia Nut Company is, and at all times relevant herein, was, a business in the Village of Skokie dependent upon its public water supply to process, manufacture and package edible food products and as a business relies on a predictable fair market price for water.

9. The Village of Skokie is an Illinois municipal corporation (hereinafter "Skokie") without its own access to a clean water source and is obligated to provide a water system to the residents and businesses of Skokie.

10. Evanston is an Illinois municipal corporation with direct access to Lake Michigan water and, upon information and belief, is currently facing an 11 million dollar budget deficit for its general governmental operations.

11. Stephen Hagerty is and, as of May, 2017 was, the Mayor of the City of Evanston and directed Evanston staff to negotiate a discriminatory water rate with Skokie for retaliatory reasons.

12. Judy Fiske is, and as of May, 2017 was, an Alderman of the City of Evanston and directed Evanston staff to negotiate a discriminatory water rate with Skokie for retaliatory reasons, and ultimately voted in favor of the Punitive Rate Ordinance.

13. Peter Braithwaite is, and, as of May, 2017 was, an Alderman of the City of Evanston and directed Evanston staff to negotiate a discriminatory water rate with Skokie for retaliatory reasons, and ultimately voted in favor of the Punitive Rate Ordinance.

14. Melissa Wynne is, and as of May, 2017 was, an Alderman of the City of Evanston and directed Evanston staff to negotiate a discriminatory water rate with Skokie for retaliatory reasons, and ultimately voted in favor of the Punitive Rate Ordinance.

15. Donald Wilson is, and as of May, 2017 was, an Alderman of the City of Evanston and directed Evanston staff to negotiate a discriminatory water rate with Skokie for retaliatory reasons, and ultimately voted in favor of the Punitive Rate Ordinance.

16. Robin Rue Simmons is, and as of May, 2017 was, an Alderman of the City of Evanston and directed Evanston staff to negotiate a discriminatory water rate with Skokie for retaliatory reasons, and ultimately voted in favor of the Punitive Rate Ordinance.

17. Thomas Suffredin is, and as of May, 2017 was, an Alderman of the City of Evanston and directed Evanston staff to negotiate a discriminatory water rate with Skokie for retaliatory reasons.

18. Eleanor Revelle is, and as of May, 2017 was, an Alderman of the City of Evanston and directed Evanston staff to negotiate a discriminatory water rate with

Skokie for retaliatory reasons, and ultimately voted in favor of the Punitive Rate Ordinance.

19. Ann Rainey is, and as of May, 2017 was, an Alderman of the City of Evanston and directed Evanston staff to negotiate a discriminatory water rate with Skokie for retaliatory reasons, and ultimately voted in favor of the Punitive Rate Ordinance.

20. Cicely Fleming is, and as of May, 2017 was, an Alderman of the City of Evanston and directed Evanston staff to negotiate a discriminatory water rate with Skokie for retaliatory reasons, and ultimately voted in favor of the Punitive Rate Ordinance.

### **Facts Common To All Counts**

21. Evanston draws water from Lake Michigan, treating and delivering the water for the use and benefit of its residents, while also contracting to deliver the water to other municipalities for a fee, thus both reducing its own costs by spreading costs of operation to other municipalities and further as a profit center, providing revenue to reduce municipal costs and expenses unrelated to the delivery of water.

22. Evanston has transferred over \$58,000,000 from its water revenue over the past twenty years to its general fund for purposes unrelated to the maintenance and infrastructure of its water system.

23. As one of the very few municipalities near Skokie that has both access to Lake Michigan water and the infrastructure to deliver water to Skokie, Evanston maintains market power to unilaterally set wholesale water rates to its municipal customers and arbitrarily raise such rates. In essence, Evanston's practices operate as a monopoly. Furthermore, Evanston holds a unique and profound power by virtue of the location and configuration of legacy water supply infrastructure.

24. The rights of Illinois to the waters of Lake Michigan are subject to the powers of the Congress of the United States to regulate commerce, and therefore, the rights of Illinois to draw the waters of Lake Michigan are limited as a matter of federal law.<sup>1</sup>

25. The waters of Lake Michigan are the property of the State of Illinois (hereinafter "Illinois"), which Illinois holds in trust for the use and enjoyment of all the People of Illinois without limitation or favoritism.<sup>2</sup>

26. Illinois has established by statute a system for allocating Illinois' authorized draw of Lake Michigan water pursuant to regulations established by the "Level of Lake Michigan Act," 615 ILCS 50/1 et al, and Skokie has been granted an allocation of the water by Illinois (hereinafter "Allocation") for the use and benefit of the residents and businesses of Skokie, including Skokie Plaintiffs.

27. Evanston is required to sell Lake Michigan water to any municipality at the same price as it sells water to all other municipalities,<sup>3</sup> as mandated by its authorization to draw water directly from Lake Michigan and because access to water is a fundamental right protected by federal law.

28. The Villages of Arlington Heights, Buffalo Grove, Des Plaines, Mount Prospect, and Wheeling (hereinafter "NWC Municipalities") have purchased, and Evanston has delivered, treated water for the use and benefit of their respective businesses and residences.

29. The Village of Morton Grove (hereinafter "Morton Grove") and the Village of Niles (hereinafter "Niles") have contracted to purchase, and Evanston has agreed to deliver, treated water from Lake Michigan for the use and benefit of their respective businesses

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<sup>1</sup> *State of Wisconsin v. State of Illinois*, 278 U.S. 367 (1929); *Wisconsin v. Illinois*, 388 U.S. 426 (1967), as modified by 449 U.S. 48 (1980).

<sup>2</sup> *Illinois Central Railroad v. State of Illinois*, 146 U.S. 387, 452 (1892).

<sup>3</sup> 70 ILCS 2605/26.

and residences which are adjacent to Skokie. Also, Evanston's rate calculations with regard to Skokie, employ assumptions and factors that yield to its excessive returns on investment. At the same time, Evanston has agreed to provide water supply to similarly situated NWC Municipalities without charging equivalent returns. Evanston's rates to NWC Municipalities are considerably below those imposed on Skokie under its Punitive Rate Ordinance.

30. The use and enjoyment of Lake Michigan water is a right that Skokie Plaintiffs enjoy, as do all other businesses and residences of Illinois, and Skokie Plaintiffs are entitled to equal access and a fair market price for the water.

31. Since 1944, Skokie has purchased, and Evanston has delivered, treated water to the Skokie Plaintiffs, including all businesses and residences, through an integrated and interdependent water pipe and infrastructure system.

32. Subsequent to the original agreement between Skokie and Evanston to supply water, in 1963 Skokie and Evanston negotiated a 30-year wholesale water supply contract through June of 1993. Thereafter, a new wholesale water supply contract was entered into between Skokie and Evanston which expired in February of 2017.

33. In or about February, 2017, Skokie and Evanston entered into a series of contract extensions, including the obligation of Evanston to assure the health, safety and maintenance of the Skokie water supply.

34. Simultaneously, Evanston entered into private negotiations with Niles and Morton Grove to supply water to their businesses and residences, and refused Skokie's request to be part of, or present at, those negotiations.

35. Any agreement with Niles and/or Morton Grove would require water to flow through new pipes in Skokie streets. Rather than have all parties at the table to reach



an accord on the method of delivery and water source, Evanston isolated Skokie because it intended to charge Skokie a higher wholesale water rate than it charged Morton Grove and Niles.

36. During the period of negotiations between Evanston, Niles and Morton Grove, Evanston refused to negotiate a new wholesale water agreement with Skokie and made extensive efforts to maintain secrecy as to the wholesale water rate negotiated with Niles and Morton Grove.

37. Upon completion of its Niles and Morton Grove wholesale water agreements, Evanston reinstated negotiations with Skokie in or about March, 2017.

38. After months of ongoing negotiations between Skokie and Evanston, Evanston abruptly discontinued all negotiations in July, 2017.

39. During negotiating sessions between Skokie and Evanston on April 18, 2017, May 11, 2017 and May 30, 2017, members of the Evanston negotiating team, and in particular Assistant City Manager Marty Lyons (hereinafter "Lyons") and David Stoneback, (hereinafter "Stoneback") made harsh and punitive statements alleging that Skokie had received excessively favorable wholesale water rates through the prior agreements with Evanston, and further stated that Evanston was going to get back revenue it perceived it had lost through the previous agreement as a matter of retribution, regardless of other wholesale water rates contracted with Niles, Morton Grove and NWC Municipalities.

40. During the same negotiation sessions, when confronted with the lower disparate wholesale water rates given to all other Evanston water customers, Lyons and Stoneback stated in reference to the recently completed negotiations with Niles and Morton Grove, that there was a benefit to being the first to negotiate.

41. Upon information and belief, the comments and negotiating position taken by Lyons and Stoneback were adopted at the express direction of the Evanston Defendants for discriminatory purposes unrelated to and outside the scope of their governmental duties and authority.

42. In August, 2017, Skokie Village Manager, John T. Lockerby (hereinafter “Lockerby”), sent a letter to Lyons confirming the proposal made by Skokie at its negotiation meetings on May 30, 2017, and June 30, 2017, to switch from the integrated and interdependent water pipe and infrastructure system currently in use by Skokie, to a dump-and-pump water system delivery. A dump-and-pump system sends water from Evanston to an independent water treatment and pumping plant owned by the municipal customer located on the municipality’s border. This delivery system is identical to the system that Niles and Morton Grove planned to use. Skokie offered to construct the new dump-and-pump system at Skokie’s cost.

43. Similarly, prior to and during the April 2017 municipal elections in Evanston, some elected officials and candidates proclaimed their intention to compel Skokie, in the new wholesale water rate contract, to pay significantly more for water because of the heretofore perceived favorable rates it had received, and such intended rates were for discriminatory purposes unrelated to and outside the scope of their governmental duties and authority.

44. Alderman Ann Rainey threatened to hire attorneys to break the previous wholesale water contract with Skokie and impose, through oppression (by its control of Lake Michigan water), new, arbitrary wholesale water rates for discriminatory purposes unrelated to and outside the scope of her governmental duties and authority.

45. Evanston has a 5 million dollar deficit looming in its finances that was undisclosed prior to Evanston's April 2017 municipal elections, although known to its City Manager, Lyons and elected officials. When coupled with its use of over \$4,500,000 of wholesale water rate revenue for non-water related budget items in that year, Evanston has a growing 10 million dollar municipal deficit, which it seeks to plug with its discriminatory wholesale water rates on the Skokie Plaintiffs.

46. Evanston's Punitive Rate Ordinance imposes water rates based on calculations that include exploitive returns not imposed on similarly situated customers. Evanston's asymmetrical rate calculations amount to undue rate discrimination. The proposed use, methods of delivery within Evanston, and the relative quantities of water purchased by Niles, Morton Grove and the NWC Municipalities are the same as for Skokie, and yet the Evanston contract wholesale water rate for Niles and Morton Grove is \$.78/1,000 gallons and for NWC Municipalities is \$.67/1,000 gallons.

47. Evanston enacted the Punitive Rate without any meaningful opportunity for the Skokie Plaintiffs to be heard prior to the adoption of the Punitive Rate Ordinance. Evanston has never heretofore unilaterally imposed a water rate upon any of its municipal water customers through an ordinance, rather than through a negotiated contract.

48. Evanston's enactment of the Punitive Rate Ordinance set the rate for Lake Michigan water provided to Skokie at \$2.06/1,000 gallons, in contrast to the NWC Municipalities rate of \$.67/1,000 gallons and the secret Niles and Morton Grove rate of \$.78/1,000 gallons and moreover, the rate of \$1.53/1,000 gallons offered by Evanston to Skokie on May 10, 2017 during the negotiations.

49. The rate for Lake Michigan water as set forth in the Punitive Rate Ordinance is oppressive, arbitrary, discriminatory, contrary to Illinois law and violative of Skokie Plaintiffs' substantive due process rights and the adoption of the Punitive Rate Ordinance without formal notice to the Skokie Plaintiffs or a meaningful opportunity for the Skokie Plaintiffs to be heard was contrary to Illinois law and violative of Skokie Plaintiffs' procedural due process rights.

50. The rate for Lake Michigan water as set forth in the Punitive Rate Ordinance causes Plaintiffs to be treated differently from water users in the NWC Municipalities, Morton Grove and Niles without any rational basis. Furthermore, Evanston's Punitive Rate Ordinance is violative of established industry rate-making practices which were developed to prevent this situation. As such, Evanston's adoption of the Punitive Rate Ordinance without meaningful notice or a meaningful opportunity to be heard, was intentionally oppressive, arbitrary, discriminatory, contrary to Illinois law and violative of Skokie Plaintiffs' right to equal protection under the law.

### **COUNT I**

#### **Declaratory Judgment: Violation of Procedural Due Process Rights**

51. Skokie Plaintiffs restate and re-allege paragraphs 1-50 as Paragraphs 51-100 of the Complaint as if fully set forth herein.

101. Because Skokie Plaintiffs have the right to use and enjoy Lake Michigan water to the same extent as other citizens of Illinois located in the NWC Municipalities, Morton Grove, and Niles, Evanston cannot exercise its governmental authority in a manner that deprives Skokie Plaintiffs of their rights as citizens of Illinois without meaningful notice and a right to be heard.

102. Without notice that Evanston would be considering the Punitive Rate Ordinance, Skokie Plaintiffs had no meaningful opportunity to be heard regarding the impact on Skokie Plaintiffs' right to use and enjoy Lake Michigan water in the same manner as similarly situated citizens of Illinois prior to the adoption of the Punitive Rate Ordinance.

103. As a result of Evanston's adoption of the Punitive Rate Ordinance without affording Skokie Plaintiffs with meaningful notice or opportunities to be heard, Skokie Plaintiffs have suffered, or will be suffering, damages in the form of increased water rates, which damages will be ongoing until the Punitive Rate Ordinance is repealed.

104. A real controversy exists with respect to the validity of the Punitive Rate Ordinance.

**WHEREFORE**, Skokie Plaintiffs respectfully request this Court to:

- a. Declare that Evanston's adoption of the Punitive Rate Ordinance affects the rights of Skokie Plaintiffs in an adverse, discriminatory and material way;
- b. Declare that Evanston's adoption of the Punitive Rate Ordinance occurred without providing Skokie Plaintiffs with reasonable notice;
- c. Declare that Evanston's adoption of the Punitive Rate Ordinance occurred without providing Skokie Plaintiffs with a meaningful opportunity to be heard before such adoption;
- d. Declare that Evanston's adoption of the Punitive Rate Ordinance violated Skokie Plaintiffs' rights to procedural due process in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States;
- e. Declare that the adoption of the Punitive Rate Ordinance is void *ab initio* because of such procedural due process violations;
- f. Instruct and mandate that Evanston must provide water to all of its municipal customers a cost of service basis without discriminatory factors or using factors that are discriminatory; and
- g. Grant other such relief as may be just and equitable.

**COUNT II**

**Declaratory Judgment: Violation of Substantive Due Process Rights**

105. Skokie Plaintiffs restate and re-allege paragraphs 1-50 as Paragraphs 105-154 of the Complaint as if fully set forth herein.

155. Because Skokie Plaintiffs have a right to use and enjoy Lake Michigan water to the same extent as other citizens of Illinois located in the NWC Municipalities, Morton Grove and Niles, Evanston cannot exercise its governmental authority in a manner that deprives Skokie Plaintiffs of their rights as a citizen of Illinois without due process of law.

156. The rate set for Lake Michigan water in the Punitive Rate Ordinance, being 264%-307% higher than the rates for Lake Michigan water charged for use by residents of the NWC Municipalities, Morton Grove and Niles, is arbitrary, discriminatory, capricious and contrary to Illinois law in violation of Skokie Plaintiffs' due process rights.

157. As a result of Evanston's adoption of the Punitive Rate Ordinance and its setting of rates that are arbitrary, discriminatory, capricious and contrary to Illinois law, Skokie Plaintiffs have suffered, or will be suffering, damages in the form of increased water rates, which damages will be ongoing until the Punitive Rate Ordinance is repealed.

158. A real controversy exists with respect to the validity of the Punitive Rate Ordinance.

**WHEREFORE**, Skokie Plaintiffs respectfully request this Court to:

a. Declare that Evanston's adoption of the Punitive Rate Ordinance affects the rights of Skokie Plaintiffs in an adverse and material way;

b. Declare that the rate for Lake Michigan water as set forth in the Punitive Rate Ordinance is arbitrary, discriminatory, capricious and contrary to Illinois law;

c. Declare that Evanston's arbitrary, discriminatory and capricious action in adopting the Punitive Rate Ordinance in a manner contrary to Illinois law has violated Skokie Plaintiffs' rights to substantive due process in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States;

- d. Declare that the adoption of the Punitive Rate Ordinance is void *ab initio* because of such substantive due process violations;
- e. Instruct and mandate that Evanston must provide water to all of its municipal customers at identical wholesale water rates; and
- f. Grant other such relief as may be just and equitable.

### **COUNT III**

#### **Declaratory Judgment: Violation of Right to Equal Protection under the Law**

159. Skokie Plaintiffs restate and re-allege paragraphs 1-50 as Paragraphs 159-208 of the Complaint as if fully set forth herein.

209. Because Skokie Plaintiffs have a right to use and enjoy Lake Michigan water to the same extent as other citizens of Illinois located in the NWC Municipalities, Morton Grove and Niles, Evanston cannot exercise its governmental authority in a manner that deprives Skokie Plaintiffs of their rights as citizens of Illinois to equal protection under the law.

210. Because the rate set for Lake Michigan water in the Punitive Rate Ordinance is 264%-307% higher than the rates for Lake Michigan water charged for use by residents of the NWC Municipalities, Morton Grove and Niles, Skokie Plaintiffs are being treated in a manner unequal to such residents of the NWC Municipalities, Morton Grove and Niles.

211. There is no rational basis for the differential rates for Lake Michigan water among the residents and users of water in Skokie, the NWC Municipalities, Morton Grove and Niles.

212. By setting grossly different rates for Skokie Plaintiffs and other residents and users of water in Skokie when compared to residents and users in the NWC Municipalities, Morton Grove and Niles, Evanston has acted in an arbitrary,



discriminatory and capricious manner that is contrary to Illinois law and in violation of Skokie Plaintiffs' rights to equal protection under the law.

213. As a result of Evanston's adoption of the Punitive Rate Ordinance and its resulting denial of Skokie Plaintiffs' equal protection rights, Skokie Plaintiffs have suffered, or will be suffering, damages in the form of increased water rates, which damages will be ongoing until the Punitive Rate Ordinance is repealed.

214. A real controversy exists with respect to the validity of the Punitive Rate Ordinance.

**WHEREFORE**, Skokie Plaintiffs respectfully request this Court to:

a. Declare that Evanston's adoption of the Punitive Rate Ordinance affects the rights of Skokie Plaintiffs in an adverse and material way that is different from similarly situated citizens of Illinois who use and enjoy Lake Michigan water drawn and sold by Evanston;

b. Declare that the differential rate for Lake Michigan water as set forth in the Punitive Rate Ordinance as compared to the rates charged to residents and users of Lake Michigan water drawn and sold by Evanston lacks any rational basis and is arbitrary, discriminatory, capricious and contrary to Illinois law;

c. Declare that Evanston's arbitrary, discriminatory and capricious action in adopting the Punitive Rate Ordinance in a manner contrary to Illinois law and without a rational basis for differentiating Skokie Plaintiffs from other users of Lake Michigan water has violated Skokie Plaintiffs' rights to equal protection under the law in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States;

d. Declare that the adoption of the Punitive Rate Ordinance is void *ab initio* because of such equal protection violations;

e. Instruct and mandate that Evanston must provide water to all of its municipal customers at identical wholesale water rates; and

f. Grant other such relief as may be just and equitable.



**COUNT IV**

**Violation of Procedural Due Process Rights under 42 USC §§1983, 1988**

215. Skokie Plaintiffs restate and re-allege paragraphs 1-50 as Paragraphs 215-264 of the Complaint as if fully set forth herein.

265. Rather than continue negotiations, allow Skokie Plaintiffs to appear before the Evanston Council, enter into mediation or propose a counter-offer to any of the 3 letters Skokie sent, Evanston violated Skokie Plaintiffs' procedural due process rights.

Accordingly, Skokie Plaintiffs have suffered, or will be suffering, damages in the form of increased water rates as set forth in the Punitive Rate Ordinance

266. Under 42 U.S.C. §1983:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

267. Evanston, under color of the Punitive Rate Ordinance, has subjected Skokie Plaintiffs to a deprivation of Skokie Plaintiffs' rights to procedural due process in violation of 42 U.S.C. §1983.

268. As a result of Evanston's adoption of the Punitive Rate Ordinance in violation of Skokie Plaintiffs' procedural due process rights, Skokie Plaintiffs have suffered, or will

be suffering, damages in the form of increased water rates, which damages will be ongoing until the Punitive Rate Ordinance is repealed.

269. Skokie Plaintiffs have also suffered expense in bringing this action to vindicate their constitutional rights against Evanston, which expenses are recoverable under 42 U.S.C. §1988.

**WHEREFORE**, Skokie Plaintiffs respectfully request this Court to:

a. Declare that Evanston's adoption of the Punitive Rate Ordinance has violated Skokie Plaintiffs' rights to procedural due process in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States;

b. Declare that Skokie Plaintiffs have been damaged as a result of Evanston's adoption of the Punitive Rate Ordinance and its violation of Skokie Plaintiffs' rights to procedural due process;

c. Declare the adoption of the Punitive Rate Ordinance is void *ab initio* because of such procedural due process violations;

d. Instruct and mandate that Evanston must provide water to all of its municipal customers at identical wholesale water rates;

e. Award Skokie Plaintiffs damages resulting from the Punitive Rate Ordinance;

f. Award Skokie Plaintiffs attorneys' fees and costs relating to this action;  
and

g. Grant other such relief as may be just and equitable.

### **COUNT V**

#### **Violation of Substantive Due Process Rights under 42 USC §§1983, 1988**

270. Skokie Plaintiffs restate and re-allege paragraphs 1-50 as Paragraphs 270-319 of the Complaint as if fully set forth herein.

320. Because Evanston has violated Skokie Plaintiffs' substantive due process rights, Skokie Plaintiffs have suffered, or will be suffering, damages in the form of increased water rates as set forth in the Punitive Rate Ordinance.

321. Evanston, under color of the Punitive Rate Ordinance, has subjected Skokie Plaintiffs to a deprivation of Skokie Plaintiffs' rights to substantive due process in violation of 42 U.S.C. §1983.

322. As a result of Evanston's adoption of the Punitive Rate Ordinance in violation of Skokie Plaintiffs' substantive due process rights, Skokie Plaintiffs have suffered, or will be suffering, damages in the form of increased water rates, which damages will be ongoing until the Punitive Rate Ordinance is repealed.

323. Skokie Plaintiffs have also suffered expense in bringing this action to vindicate its constitutional rights against Evanston, which expenses are recoverable under 42 U.S.C. §1988.

**WHEREFORE**, Skokie Plaintiffs respectfully request this Court to:

- a. Declare that Evanston's adoption of the Punitive Rate Ordinance has violated Skokie Plaintiffs' rights to substantive due process in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States;
- b. Declare that Skokie Plaintiffs have been damaged as a result of Evanston's adoption of the Punitive Rate Ordinance and its violation of Skokie Plaintiffs' rights to substantive due process;
- c. Declare the adoption of the Punitive Rate Ordinance is void *ab initio* because of such substantive due process violations;
- d. Instruct and mandate that Evanston must provide water to all of its municipal customers at identical wholesale water rates;
- e. Award Skokie Plaintiffs damages resulting from the Punitive Rate Ordinance;
- f. Award Skokie Plaintiffs attorneys' fees and costs relating to this action;  
and
- g. Grant other such relief as may be just and equitable.

**COUNT VI**

**Violation of Right to Equal Protection under the Law under 42 USC §§1983, 1988**

324. Skokie Plaintiffs restate and re-allege paragraphs 1-50 as Paragraphs 324-373 of the Complaint as if fully set forth herein.

374. Because Evanston has violated Skokie Plaintiffs' equal protection rights, Skokie Plaintiffs have suffered, or will be suffering, damages in the form of increased water rates as set forth in the Punitive Rate Ordinance.

375. Evanston, under color of the Punitive Rate Ordinance, has subjected Skokie Plaintiffs to a deprivation of Skokie Plaintiffs' rights to equal protection under the law in violation of 42 U.S.C. §1983.

376. As a result of Evanston's adoption of the Punitive Rate Ordinance in violation of Skokie Plaintiffs' equal protection rights, Skokie Plaintiffs have suffered, or will be suffering, damages in the form of increased water rates, which damages will be ongoing until the Punitive Rate Ordinance is repealed.

377. Skokie Plaintiffs have also suffered expense in bringing this action to vindicate its constitutional rights against Evanston, which expenses are recoverable under 42 U.S.C. §1988.

**WHEREFORE**, Skokie Plaintiffs respectfully request this Court to:

a. Declare that Evanston's adoption of the Punitive Rate Ordinance has violated Skokie Plaintiffs' equal protection rights in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States;

b. Declare that Skokie Plaintiffs have been damaged as a result of Evanston's adoption of the Punitive Rate Ordinance and its violation of Skokie Plaintiffs' equal protection rights;

c. Declare the adoption of the Punitive Rate Ordinance is void *ab initio* because of such violations of Skokie Plaintiffs' equal protection rights;

- d. Instruct and mandate that Evanston must provide water to all of its municipal customers at identical wholesale water rates;
- e. Award Skokie Plaintiffs damages resulting from the Punitive Rate Ordinance;
- f. Award Skokie Plaintiffs attorneys' fees and costs relating to this action; and
- g. Grant other such relief as may be just and equitable.

## **COUNT VII**

### **Declaratory Judgment: Violation of Procedural Due Process Rights**

378. Skokie Plaintiffs restate and re-allege paragraphs 1-50 as Paragraphs 378-427 of the Complaint as if fully set forth herein.

428. On information and belief, during meetings, executive sessions and private conversations during the course of the negotiations with Skokie, Stephen Hagerty, individually, Judy Fiske, individually, Peter Braithwaite, individually, Melissa Wynne, individually, Donald Wilson, individually, Robin Rue Simmons, individually, Thomas Suffredin, individually, Eleanor Revelle, individually, Ann Rainey, individually, and Cecily Fleming, individually, (hereinafter collectively "Evanston Individual Defendants"), for discriminatory purposes unrelated to and outside the scope of their governmental duties and authority, instructed Lyons and Stoneback to negotiate in bad faith, as a matter of retribution, to get back revenue that Evanston had perceived as lost through the previous agreement with Skokie, and that this bad faith negotiation occurred without regard to the other wholesale water rates contracted with Niles, Morton Grove and NWC Municipalities.

429. Because Skokie Plaintiffs have the right to use and enjoy Lake Michigan water to the same extent as other citizens of Illinois located in the NWC Municipalities, Morton Grove and Niles, Evanston Individual Defendants cannot wield their power in a manner

that deprives Skokie Plaintiffs of their rights as citizens of Illinois without meaningful notice and a right to be heard.

430. Without notice that Evanston Individual Defendants were instructing Lyons and Stoneback to negotiate in bad faith, as a matter of retribution, to get back revenue that Evanston had perceived as lost through the previous agreement with Skokie, and that this bad faith negotiation was occurring without regard to the other wholesale water rates contracted with Niles, Morton Grove and NWC Municipalities, Skokie Plaintiffs had no meaningful opportunity to be heard regarding the impact on Skokie Plaintiffs' right to use and enjoy Lake Michigan water in the same manner as similarly situated citizens of Illinois prior to the adoption of the Punitive Rate Ordinance.

431. As a result of Evanston Individual Defendants decision to instruct Lyons and Stoneback to negotiate in bad faith, as a matter of retribution, to get back revenue that Evanston had perceived as lost through the previous agreement with Skokie, Skokie Plaintiffs have suffered, or will be suffering, damages in the form of increased water rates, which damages will be ongoing until the Punitive Rate Ordinance is repealed.

432. A real controversy exists with respect to the validity of the Punitive Rate Ordinance.

**WHEREFORE**, Skokie Plaintiffs respectfully request this Court to:

a. Declare that Evanston Individual Defendants' instruction to Lyons and Stoneback to negotiate in bad faith, as a matter of retribution, to get back revenue that Evanston had perceived as lost through the previous agreement with Skokie, without regard to the other wholesale water rates contracted with Niles, Morton Grove and NWC Municipalities, affects the rights of Skokie Plaintiffs in an adverse and material way;

b. Declare that Evanston Individual Defendants' instruction to Lyons and Stoneback to negotiate in bad faith, as a matter of retribution, to get back revenue that Evanston had perceived as lost through the previous agreement with Skokie, without regard to the other wholesale water rates contracted with Niles, Morton Grove and NWC Municipalities, occurred without providing Skokie Plaintiffs with reasonable notice;

c. Declare that Evanston Individual Defendants' instruction to Lyons and Stoneback to negotiate in bad faith, as a matter of retribution, to get back revenue that Evanston had perceived as lost through the previous agreement with Skokie, without regard to the other wholesale water rates contracted with Niles, Morton Grove and NWC Municipalities, occurred without providing Skokie Plaintiffs with a meaningful opportunity to be heard before such adoption;

d. Declare that Evanston Individual Defendants' instruction to Lyons and Stoneback to negotiate in bad faith, as a matter of retribution, to get back revenue that Evanston had perceived as lost through the previous agreement with Skokie, without regard to the other wholesale water rates contracted with Niles, Morton Grove and NWC Municipalities violated Skokie Plaintiffs' rights to procedural due process in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States;

e. Instruct and mandate that Evanston must provide water to all of its municipal customers at identical wholesale water rates;

f. Declare that the adoption of the Punitive Rate Ordinance is void *ab initio* because of such procedural due process violations; and

g. Grant other such relief as may be just and equitable.

### **COUNT VIII**

#### **Declaratory Judgment: Violation of Substantive Due Process Rights**

433. Skokie Plaintiffs restate and re-allege paragraphs 1-50 as Paragraphs 433-482 of the Complaint as if fully set forth herein.

483. On information and belief, during meetings, executive sessions and private conversations during the course of the negotiations with Skokie, Evanston Individual Defendants, for discriminatory purposes unrelated to and outside the scope of their governmental duties and authority, instructed Lyons and Stoneback to negotiate in bad faith, as a matter of retribution, to get back revenue that Evanston had perceived as lost through the previous agreement with Skokie, and that this bad faith negotiation occurred without regard to the other wholesale water rates contracted with Niles, Morton Grove and NWC Municipalities.



484. Because Skokie Plaintiffs have a right to use and enjoy Lake Michigan water to the same extent as other citizens of Illinois located in the NWC Municipalities, Morton Grove and Niles, Evanston Individual Defendants cannot exercise their individual authority in a discriminatory manner that deprives Skokie Plaintiffs of their rights as citizens of Illinois without due process of law.

485. The rate set for Lake Michigan water in the Punitive Rate Ordinance, being 264%-307% higher than the rates for Lake Michigan water charged for use by residents of the NWC Municipalities, Morton Grove and Niles is arbitrary, discriminatory, capricious, and contrary to Illinois law in violation of Skokie Plaintiffs' due process rights.

486. As a result of Evanston Individual Defendants' instruction to Lyons and Stoneback to negotiate in bad faith, as a matter of retribution, to get back revenue that Evanston had perceived as lost through the previous agreement with Skokie, without regard to the other wholesale water rates contracted with Niles, Morton Grove and NWC Municipalities, Skokie Plaintiffs have suffered, or will be suffering, damages in the form of increased water rates, which damages will be ongoing until the Punitive Rate Ordinance is repealed.

487. A real controversy exists with respect to the validity of the Punitive Rate Ordinance.

**WHEREFORE**, Skokie Plaintiffs respectfully request this Court to:

a. Declare that Evanston Individual Defendants instruction to Lyons and Stoneback to negotiate in bad faith, as a matter of retribution, to get back revenue that Evanston had perceived as lost through the previous agreement with Skokie, without regard to the other wholesale water rates contracted with Niles, Morton Grove and NWC Municipalities, affects the rights of Skokie Plaintiffs in an adverse and material way;

b. Declare that the rate for Lake Michigan water as set forth in the Punitive Rate Ordinance is arbitrary, discriminatory, capricious, and contrary to Illinois law;



c. Declare that Evanston Individual Defendants' instruction to Lyons and Stoneback to negotiate in bad faith, as a matter of retribution, to get back revenue that Evanston had perceived as lost through the previous agreement with Skokie, without regard to the other wholesale water rates contracted with Niles, Morton Grove and NWC Municipalities, is arbitrary, discriminatory, and capricious in a manner contrary to Illinois law and has violated Skokie Plaintiffs' rights to substantive due process in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States; and

d. Instruct and mandate that Evanston must provide water to all of its municipal customers at identical wholesale water rates;

e. Declare that the adoption of the Punitive Rate Ordinance is void *ab initio* because of such substantive due process violations; and

f. Grant other such relief as may be just and equitable.

### **COUNT IX**

#### **Declaratory Judgment: Violation of Right to Equal Protection under the Law**

488. Skokie Plaintiffs restate and re-allege paragraphs 1-50 as Paragraphs 488-538 of the Complaint as if fully set forth herein.

539. On information and belief, during their executive sessions, Evanston Individual Defendants, for discriminatory purposes unrelated to and outside the scope of their governmental duties and authority, instructed Lyons and Stoneback to negotiate in bad faith, as a matter of retribution, to get back revenue that Evanston had perceived as lost through the previous agreement with Skokie, and that this bad faith negotiation occurred without regard to the other wholesale water rates contracted with Niles, Morton Grove and NWC Municipalities.

540. Because Skokie Plaintiffs have a right to use and enjoy Lake Michigan water to the same extent as other citizens of Illinois located in the NWC Municipalities, Morton Grove and Niles, Evanston Individual Defendants cannot exercise their individual authority in a manner that deprives Skokie Plaintiffs of their rights as citizens of Illinois to equal protection of law.

541. Because the rate set for Lake Michigan water in the Punitive Rate Ordinance is 264%-307% higher than the rates for Lake Michigan water charged for use by residents of the NWC Municipalities, Morton Grove and Niles, Skokie Plaintiffs are being treated in a manner unequal to such residents of the NWC Municipalities, Morton Grove and Niles.

542. There is no rational basis for the differential rates for Lake Michigan water among the residents and users of water in Skokie, the NWC Municipalities, Morton Grove and Niles.

543. By setting grossly differential rates for Skokie Plaintiffs and other residents and users of water in Skokie when compared to residents and users in the NWC Municipalities, Morton Grove and Niles, Evanston Individual Defendants acted in an arbitrary, discriminatory, and capricious manner that is contrary to Illinois law and in violation of Skokie Plaintiffs rights to equal protection under the laws.

544. As a result of Evanston Individual Defendants' instruction to Lyons and Stoneback to negotiate in bad faith, as a matter of retribution, to get back revenue that Evanston had perceived as lost through the previous agreement with Skokie, without regard to the other wholesale water rates contracted with Niles, Morton Grove and NWC Municipalities, and its resulting denial of Skokie Plaintiffs' equal protection rights, Skokie Plaintiffs have suffered, or will be suffering, damages in the form of increased water rates, which damages will be ongoing until the Punitive Rate Ordinance is repealed.

545. A real controversy exists with respect to the validity of the Punitive Rate Ordinance.

**WHEREFORE**, Skokie Plaintiffs respectfully request this Court to:

a. Declare that Evanston's adoption of the Punitive Rate Ordinance affects the rights of Skokie Plaintiffs in an adverse and material way that is different from

similarly situated citizens of Illinois who use and enjoy Lake Michigan water drawn and sold by Evanston;

b. Declare that the differential rate for Lake Michigan water as set forth in the Punitive Rate Ordinance as compared to the rates charged to residents and users of Lake Michigan water drawn and sold by Evanston lacks any rational basis and is arbitrary, discriminatory, capricious and contrary to Illinois law;

c. Declare that Evanston Individual Defendants' arbitrary, discriminatory, and capricious action in instructing Lyons and Stoneback to negotiate in bad faith, as a matter of retribution, to get back revenue that Evanston had perceived as lost through the previous agreement with Skokie, without regard to the other wholesale water rates contracted with Niles, Morton Grove and NWC Municipalities, is contrary to Illinois law and without a rational basis for differentiating Skokie Plaintiffs from other users of Lake Michigan water and has violated Skokie Plaintiffs' rights to equal protection under the laws in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States;

d. Instruct and mandate that Evanston must provide water to all of its municipal customers at identical wholesale water rates;

e. Declare that the adoption of the Punitive Rate Ordinance is void *ab initio* because of such equal protection violations; and

f. Grant other such relief as may be just and equitable.

### **COUNT X**

#### **Violation of Procedural Due Process Rights under 42 USC §§1983, 1988**

546. Skokie Plaintiffs restate and re-allege paragraphs 1-50 as Paragraphs 546-595 of the Complaint as if fully set forth herein.

596. On information and belief, Evanston Individual Defendants, for discriminatory purposes unrelated to and outside the scope of their governmental duties and authority, instructed Lyons and Stoneback to negotiate in bad faith, as a matter of retribution, to get back revenue that Evanston had perceived as lost through the previous agreement with Skokie, and this bad faith negotiation occurred without regard to the other wholesale water rates contracted with Niles, Morton Grove and NWC Municipalities.

597. Because Evanston Individual Defendants have violated Skokie Plaintiffs' procedural due process rights, Skokie Plaintiffs have suffered, or will be suffering, damages in the form of increased water rates as set forth in the Punitive Rate Ordinance.

598. Under 42 U.S.C. §1983:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

599. Evanston Individual Defendants, under color of the Punitive Rate Ordinance, have subjected Skokie Plaintiffs to a deprivation of Skokie Plaintiffs' rights to procedural due process in violation of 42 U.S.C. §1983.

600. As a result of Evanston Individual Defendants instructing Lyons and Stoneback to negotiate in bad faith, as a matter of retribution, to get back revenue that Evanston had perceived as lost through the previous agreement with Skokie, without regard to the other wholesale water rates contracted with Niles, Morton Grove and NWC Municipalities, in violation of Skokie Plaintiffs' procedural due process rights, Skokie Plaintiffs have suffered, or will be suffering, damages in the form of increased water rates, which damages will be ongoing until the Punitive Rate Ordinance is repealed.

601. Skokie Plaintiffs have also suffered expense in bringing this action to vindicate their constitutional rights against Evanston Individual Defendants, which expenses are recoverable under 42 U.S.C. §1988.

**WHEREFORE**, Skokie Plaintiffs respectfully request this Court to:

a. Declare that Evanston Individual Defendants instruction to Lyons and Stoneback to negotiate in bad faith, as a matter of retribution, to get back revenue that Evanston had perceived as lost through the previous agreement with Skokie, without regard to the other wholesale water rates contracted with Niles, Morton Grove and NWC Municipalities, violated Skokie Plaintiffs' rights to procedural due process in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States;

b. Declare that Skokie Plaintiffs have been damaged as a result of Evanston Individual Defendants' instruction to Lyons and Stoneback to negotiate in bad faith, as a matter of retribution, to get back revenue that Evanston had perceived as lost through the previous agreement with Skokie, without regard to the other wholesale water rates contracted with Niles, Morton Grove and NWC Municipalities, and Skokie Plaintiffs' rights to procedural due process have been violated thereby;

c. Declare the adoption of the Punitive Rate Ordinance is void *ab initio* because of such procedural due process violations;

d. Instruct and mandate that Evanston must provide water to all of its municipal customers at identical wholesale water rates;

e. Award Skokie Plaintiffs damages resulting from the Punitive Rate Ordinance;

f. Award Skokie Plaintiffs attorneys' fees and costs relating to this action;  
and

g. Grant other such relief as may be just and equitable.

## **COUNT XI**

### **Violation of Substantive Due Process Rights under 42 USC §§1983, 1988**

602. Skokie Plaintiffs restate and re-allege paragraphs 1-50 as Paragraphs 602-651 of the Complaint as if fully set forth herein.

652. On information and belief, Evanston Individual Defendants, for discriminatory purposes unrelated to and outside the scope of their governmental duties and authority,

instructed Lyons and Stoneback to negotiate in bad faith, as a matter of retribution, to get back revenue that Evanston had perceived as lost through the previous agreement with Skokie, and this bad faith negotiation occurred without regard to the other wholesale water rates contracted with Niles, Morton Grove and NWC Municipalities.

653. Because Evanston Individual Defendants have violated Skokie Plaintiffs' substantive due process rights, Skokie Plaintiffs have suffered, or will be suffering, damages in the form of increased water rates as set forth in the Punitive Rate Ordinance.

654. Evanston Individual Defendants, by instructing Lyons and Stoneback to negotiate in bad faith, as a matter of retribution, to get back revenue that Evanston had perceived as lost through the previous agreement with Skokie, without regard to the other wholesale water rates contracted with Niles, Morton Grove and NWC Municipalities, have subjected Skokie Plaintiffs to a deprivation of Skokie Plaintiffs' rights to substantive due process in violation of 42 U.S.C. §1983.

655. As a result of Evanston Individual Defendants' instructing Lyons and Stoneback to negotiate in bad faith, as a matter of retribution, to get back revenue that Evanston had perceived as lost through the previous agreement with Skokie, without regard to the other wholesale water rates contracted with Niles, Morton Grove and NWC Municipalities, Evanston Individual Defendants violated Skokie Plaintiffs' substantive due process rights, and Skokie Plaintiffs have suffered, or will be suffering, damages in the form of increased water rates, which damages will be ongoing until the Punitive Rate Ordinance is repealed.

656. Skokie Plaintiffs have also suffered expense in bringing this action to vindicate its constitutional rights against Evanston Individual Defendants, which expenses are recoverable under 42 U.S.C. §1988.

**WHEREFORE**, Skokie Plaintiffs respectfully request this Court to:

a. Declare that Evanston Individual Defendants' instructing Lyons and Stoneback to negotiate in bad faith, as a matter of retribution, to get back revenue that Evanston had perceived as lost through the previous agreement with Skokie, without regard to the other wholesale water rates contracted with Niles, Morton Grove and NWC Municipalities, violated Skokie Plaintiffs' rights to substantive due process in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States;

b. Declare that Skokie Plaintiffs have been damaged as a result of Evanston Individual Defendants' instructing Lyons and Stoneback to negotiate in bad faith, as a matter of retribution, to get back revenue that Evanston had perceived as lost through the previous agreement with Skokie, without regard to the other wholesale water rates contracted with Niles, Morton Grove and NWC Municipalities, and violated Skokie Plaintiffs' rights to substantive due process;

c. Declare the adoption of the Punitive Rate Ordinance is void *ab initio* because of such substantive due process violations;

d. Instruct and mandate that Evanston must provide water to all of its municipal customers at identical wholesale water rates;

e. Award Skokie Plaintiffs damages resulting from the Punitive Rate Ordinance;

f. Award Skokie Plaintiffs attorneys' fees and costs relating to this action; and

g. Grant other such relief as may be just and equitable.

## **COUNT XII**

### **Violation of Right to Equal Protection under the Law under 42 USC §§1983, 1988**

657. Skokie Plaintiffs restate and re-allege paragraphs 1-50 as Paragraphs 657-706 of the Complaint as if fully set forth herein.

707. On information and belief, Evanston Individual Defendants, for discriminatory purposes unrelated to and outside the scope of their governmental duties and authority,



instructed Lyons and Stoneback to negotiate in bad faith, as a matter of retribution, to get back revenue that Evanston had perceived as lost through the previous agreement with Skokie, and this bad faith negotiation occurred without regard to the other wholesale water rates contracted with Niles, Morton Grove and NWC Municipalities.

708. Because Evanston Individual Defendants have violated Skokie Plaintiffs' equal protection rights, Skokie Plaintiffs have suffered, or will be suffering, damages in the form of increased water rates as set forth in the Punitive Rate Ordinance.

709. Evanston Individual Defendants, by instructing Lyons and Stoneback to negotiate in bad faith, as a matter of retribution, to get back revenue that Evanston had perceived as lost through the previous agreement with Skokie, without regard to the other wholesale water rates contracted with Niles, Morton Grove and NWC Municipalities, have subjected Skokie Plaintiffs to a deprivation of Skokie Plaintiffs' rights to equal protection under the laws in violation of 42 U.S.C. §1983.

710. As a result of Evanston Individual Defendants' instructing Lyons and Stoneback to negotiate in bad faith, as a matter of retribution, to get back revenue that Evanston had perceived as lost through the previous agreement with Skokie, without regard to the other wholesale water rates contracted with Niles, Morton Grove and NWC Municipalities, Evanston Individual Defendants violated Skokie Plaintiffs' equal protection rights, and Skokie Plaintiffs have suffered, or will be suffering, damages in the form of increased water rates, which damages will be ongoing until the Punitive Rate Ordinance is repealed.

711. Skokie Plaintiffs have also suffered expense in bringing this action to vindicate its constitutional rights against Evanston Individual Defendants, which expenses are recoverable under 42 U.S.C. §1988.



**WHEREFORE**, Skokie Plaintiffs respectfully request this Court to:

- a. Declare that Evanston's adoption of the Punitive Rate Ordinance has violated Skokie Plaintiffs' equal protection rights in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States;
- b. Declare that Skokie Plaintiffs have been damaged as a result of Evanston's adoption of the Punitive Rate Ordinance and its violation of Skokie Plaintiffs' equal protection rights;
- c. Declare the adoption of the Punitive Rate Ordinance is void *ab initio* because of such violations of Skokie Plaintiffs' equal protection rights;
- d. Instruct and mandate that Evanston must provide water to all of its municipal customers at identical wholesale water rates;
- e. Award Skokie Plaintiffs damages resulting from the Punitive Rate Ordinance;
- f. Award Skokie Plaintiffs attorneys' fees and costs relating to this action;  
and
- g. Grant other such relief as may be just and equitable.

**PLAINTIFFS HEREBY DEMAND A JURY ON ALL COUNTS**

Respectfully submitted,  
Village of Skokie, a Municipal Corporation,  
Elaine Jacobson, Paul Pitalis, Robert Quane  
and Georgia Nut Company

By:   
One of its attorneys

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